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Lucia A Keegan 01/23/2007 05:07:15 PM From DB/Inbox: Lucia A Keegan

Cable  
Text:

UNCLAS SENSITIVE PARIS 00261

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ACTION: DCM  
INFO: TSA POL ECON AMB

DISSEMINATION: DCMX  
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UNCLAS SECTION 01 OF 02 PARIS 000261

SIPDIS

SENSITIVE

STATE FOR EUR/WE, EB/TRA, S/CT; DHS FOR TSA AND CBP

E.O. 12958: N/A  
TAGS: [EAIR](#) [PTER](#) [FR](#)  
SUBJECT: FRANCE: TSA BRIEFS DATA PRIVACY AUTHORITY ON  
AVIATION SECURITY ARRANGMENTS

11. (SBU) Summary: TSA provided an extensive briefing on U.S. aviation security arrangements to the French Data Privacy Authority (CNIL) in a meeting January 12. Because of the current risk that the CNIL may wish to review all U.S. airlines' aviation security practices regarding implementation of the no-fly and selectee watch lists for conformity with French data privacy law, the briefing was an excellent opportunity to respond to concerns that go beyond the specific case being considered by the CNIL.

12. (SBU) TSA Assistant Chief Counsel for International Law Anthony Giovanniello briefed the CNIL in connection with their investigation of Continental Airlines' (CA) actions relating to the transportation of Vincent Flecheux, a French National who was refused entry to the U.S. by CBP in Houston August 13, and who in a complaint filed with the CNIL claimed that CA personnel had told him this was in connection with his presence on the No-Fly list. In previous meetings, CA had found it impossible to answer many of the CNIL's questions due to their inclusion of Sensitive Security Information (SSI), which they are prevented from disclosing to parties without a need to know.

13. (SBU) Explaining the definition and reasoning behind SSI, Giovanniello stated that he had specifically obtained permission to discuss a number of aspects of the aviation passenger pre-screening process with the CNIL in the hopes that it would clarify issues raised by the case, and put to rest suspicions that it was somehow related to No-Fly or Selectee screening, rather than the obligation of CBP to refuse entry to travelers it determined were ineligible for admission to the U.S. He emphasized that he would be unable to provide further details about the specific case, as it was TSA policy

neither to confirm or deny subject's inclusion on watchlists.

He could affirm however that CBP's decision was not related to aviation security: border protection was a separate legal and law enforcement issue. CBP maintained its own immigration watch lists, which contained names with no relation to aviation security--e.g. child abduction suspects. CNIL Commissioner de la Loyere indicated that he clearly understood the distinction between border control and aviation security.

¶4. (SBU) Giovanniello began by describing the architecture of the aviation security arrangements created after 2003. TSA administered the No Fly and Selectee lists, which were created by the Terrorist Screening Center (TSC) working with various nominating agencies. It determined who met the criteria for inclusion, broadly speaking either representing a threat to aviation or a threat of terrorism. No-Fly listees could not board U.S.-bound aircraft, while selectees required additional screening before continuing their travel. These lists were furnished to airlines, which were required to notify the USG of exact or close matches, which were then evaluated by TSC and double-checked through consultation with the originating agency if the match was positive. In response to a question about No-Fly diversions, Giovanniello explained that these decisions were made at a very high level in DHS, and only after thorough review led to a conclusion that a threat existed, in accordance with our rights under the Chicago Convention.

¶5. (SBU) The CNIL was interested in how CA applied some of these directives, and asked in particular about an orange sticker the security contractor applied to the passenger's passport, and any requirements for eventual notification of the French authorities in case of a positive match. Giovanniello replied that neither of these was required by U.S. security directives; CA counsel confirmed that its security contractor used the sticker as an aid to flag candidates for additional security screening, either because they were Selectees or had been chosen at random to meet French selectee screening requirements. CA notified the French border police immediately of any security risks encountered in screening.

¶6. (SBU) The CNIL also inquired about security measures taken to protect the lists from piracy during transmission; they had heard these did not include encryption. TSA confirmed that lists were not only protected by encryption in both directions, but by background checks and legal sanctions over divulging SSI among personnel with access to them. Giovanniello said that under the APIS Quick Query (AQO) and Secure Flight initiatives TSA would at some point be expected to entirely take over the responsibility for matching names, making transmission of the lists unnecessary. In response to another question, TSA noted that airlines were required to maintain lists and records of hits for only 60 days, in case follow-up investigation was needed. According to CA, no list of secondary screenees was maintained by their security contractor.

¶7. (SBU) Commissioner de la Loyere noted that the CNIL was particularly concerned about watchlists' inclusion of innocent passengers. How did passengers who were wrongly listed get off our watchlists? TSA explained the redress process, which the CNIL was familiar with from a letter Flecheux had received from the TSA ombudsman clearing him for travel. TSA also explained how travel is facilitated by adding a "cleared" entry to watchlists to prevent legitimate travelers with exact or close name matches to watchlist entries from being mistakenly identified with them. TSA described an upcoming modification of the redress process (DHS Traveler Redress Inquiry System), by which it would serve as a one-stop shop for watchlist redress requests, coordinating across the various agencies of DHS and facilitating the travel of legitimate passengers.

¶8. (SBU) The CNIL concluded by indicating it would be continuing its enquiries into the Flecheux case, as it still had not received responses from some French government

agencies.

¶9. (SBU) Participants for the CNIL included Commissioner Georges de la Loyere, General Secretary Yann Padova, Sophie Vuillet-Tavernier, Director of Legal Affairs, and Pascale Raulin-Serrier of the European and International Affairs Division. Continental Airlines was represented by Amy Bried, Senior Attorney, and Isabelle Gavadon, Partner in the Paris law firm FIDAL. USG attendees were Anthony Giovanniello, TSA Assistant Chief Counsel for International Law, Embassy Paris TSA Representative, and Econoff. Assistant Chief Counsel

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Giovanniello cleared this cable.

¶10. (SBU) Comment: This meeting proved to be a good opportunity to address a number of concerns raised by the CNIL. USG participation was much appreciated by Continental Airlines, and we hope the forthright description of our aviation security practices--including processes for protection of data, review of listings and redress in case of error--will encourage the CNIL to await implementation of AQQ and Secure Flight before undertaking any extensive review of airlines security screening practices, if at that point they still deem it necessary. Please visit Paris' Classified Website at:  
<http://www.state.sgov.gov/p/eur/paris/index.cfm>

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